Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Review of the Commission's Rules Governing the 896-901/935-940 MHz Band	)	WT Docket No. 17-200
	)	
	)	

COMMENTS ON NOTICE OF PROPOSED RULEMAKING

The National Association of Manufacturers ("NAM") and MRFAC, Inc. ("MRFAC") (collectively, "NAM/MRFAC"), hereby submit their joint comments on the Notice of Proposed Rulemaking in the above-captioned proceeding. FCC 19-18, released March 14, 2019 (hereinafter, the "Notice"). The Notice proposes to implement a broadband allocation in the 900 MHz band. NAM/MRFAC do not oppose the proposal provided that narrowband incumbents are protected. Details follow.

Introduction

The NAM is the largest manufacturing association in the United States, representing 14,000 small and large manufacturers in every industrial sector and in all 50 states. Manufacturing employs nearly 12 million men and women, contributes more than $2 trillion to the U.S. economy annually, has the largest economic impact of any major sector, and accounts for two-thirds of private-sector research and development. The NAM is the powerful voice of the manufacturing community and the leading advocate for a policy agenda that helps manufacturers compete in the global economy and create jobs across the United States.

MRFAC is a certified frequency coordinator for the private land mobile bands from 30 to 900 MHz. MRFAC was founded 62 years ago by the NAM as its frequency coordinating arm.

For the past 41 years, MRFAC has operated independently, providing coordination and licensing-related services for manufacturers and other industrial and business entities. MRFAC has long participated in spectrum rulemakings affecting the interests of manufacturers.

For decades the 900 MHz band has been integral to productivity and worker safety in many business and industrial facilities in the United States. NAM/MRFAC members rely extensively on 900 MHz facilities. They invest millions of dollars in their communications facilities to support manufacturing production. For example:

- One member has more than $1.5 million invested in trunked 900 MHz radios with over 1,000 units in its several plants. These radio systems are used for a wide range of specialized communications needs including just-in-time delivery, materials handling with bar-code reader-equipped forklifts, robotic devices on the assembly line, security, medical, and plant maintenance.
- Another has invested $2.25 million in a 900 MHz system at just one of its plants. This facility, which employs 10,000 people, supports 1,000 radios used variously for security, fire, transportation, production, and maintenance.
- Another has invested $3.5 million in 900 MHz technology. Its systems support 650 radios and provide a wide variety of specialized communications needs. Among other things, the radios are designed to be intrinsically safe in the presence of hazardous vapors. In addition, company personnel utilize special radios when working in extremely confined spaces such as aircraft wing tanks. Aircraft manufacturers like this one have also made provision with local public safety organizations to communicate via 900 MHz systems in case of emergencies.
- One large petrochemical company member has invested millions of dollars in mission critical infrastructure and intrinsically safe radios at each of its facilities in the Los Angeles, San Francisco, New Orleans, New Jersey/New York, and Houston metropolitan areas with numerous 900 MHz channels affected. In addition, the member has several 900 MHz conventional systems throughout the United States.
- A member in the beverage industry has over $6 million invested in its 900 MHz facilities supporting nearly 1,500 subscriber units. The system is used for a range of specialized manufacturing communications needs including emergency medical and hazmat, communications with employees working alone in isolated spaces, materials handling, and remote control of locomotives and overhead cranes. Moreover, first responders share the Company's system when on the premises since their systems typically cannot penetrate many of the spaces where employees work.
- Finally, another member in the forest products industry has approximately $2 million invested in 900 MHz facilities that are typically used for safety-related

> communications purposes. These include, for example, the handling of chemicals, enclosed tank entry, firefighting, emergency medical support, and automated alarm monitoring and activation, among others.

The 900 MHz business and industrial/land transportation ("B/ILT") allocation also supports mission critical communications systems necessary to assist with Homeland Security efforts across the country. B/ILT licensees work cooperatively with federal, state, and local first responders on a wide variety of public safety issues and events.

Discussion

The Notice proposes a fundamental overhaul of the 900 MHz private land mobile radio band. While the NAM and MRFAC support the expansion of broadband facilities, there are many narrowband incumbents across the country and too few channels to assume that a broadband allocation can be easily accommodated without risk of material harm to incumbents. An analysis of the available 900 MHz B/ILT channels in all large markets shows that there are only a handful of channel pairs out of the 199 in the band that remain unassigned. Spectrum scarcity also exists in many smaller markets as well, such as Sacramento, Providence, Salt Lake City, Orlando, and Austin, among numerous others. As the Notice recognizes, "In certain areas of the country, the 900 MHz band is [already] heavily encumbered . . . ." *Id.* at para. 24.

The Notice asks whether the agency should consider some form of alignment other than the proposed 3/3 megahertz. Indeed, it asks whether the entire band should be dedicated for broadband, an allocation which would equal 5/5 megahertz. *Id.* at para. 20. NAM/MRFAC would strongly oppose making the entire band available for broadband. This outcome, because of the necessary impact on incumbent narrowband operations, would be a major disservice to the public interest in maintaining adequate, private internal communications for manufacturing in America, which delivers important, large and ubiquitous benefits to the national economy. It would be unsound to effectively evict narrowband incumbents when the availability of suitable

alternative spectrum is unclear. Alternatively, the Commission should revisit the feasibility of narrowing the broadband allocation to, say, 2/2 or even 1.4/1.4 megahertz, or foreclosing a broadband allocation altogether if it should prove necessary in a particular area for the protection of incumbents.

In the NAM/MRFAC view, the Commission should proceed on an area-by-area basis rather than focus on a nationwide broadband allocation. In areas where the band can be cleared, or where there is an obvious surplus of available B/ILT spectrum at 900 MHz, then a broadband allocation could be made. *Id.* at para. 20.

The Notice proposes a voluntary, market-driven transition process under which "the prospective broadband licensee must either reach an agreement to clear, or demonstrate how it will provide interference protection to, all covered incumbents relating to the county for which it seeks a 3/3 megahertz broadband license." *Id.* at paras. 26, 32. It further proposes to define "covered incumbents" as "any site-based licensee that is required under current rules to be protected by the placement of a broadband licensee's base station at any location within the county." *Id.*

The parties receiving a broadband proponent's offer are in the unique position to determine whether that offer meets their needs or not. Thus, NAM/MRFAC are in favor of the voluntary, market-driven approach which the Commission envisions.

A requirement that the proponent either reach an agreement to clear, or otherwise protect, incumbents in an area should be a precondition to any realignment of the band in that area. Moreover, the NAM and MRFAC support tying the proposed definition of "covered incumbent" entitled to protection to licensees under the current rules. *Id.* at para. 32. Those rules have been in place for many years and are well-understood. Absent some showing of unusual

circumstances (the kind that might, for instance, justify a waiver), the Commission should apply existing rules.

The Notice makes the suggestion that, in order to keep a narrowband incumbent "spectrally whole," the proponent should not offer the incumbent more channels than it currently has. *Id.* at para. 36. However, the Notice adds an important qualification; i.e. "unless additional channels are necessary to achieve equivalent coverage and/or capacity." *Id.* While NAM/MRFAC appreciate the Commission's desire to minimize demands on its spectrum inventory, this qualification is crucial in order to avoid potential disruption to narrowband operations.

The Notice inquires as to how the agency should deal with what it refers to as "the holdout problem." *Id.* at para. 38. In the NAM/MRFAC view, mandatory relocation should not be required. There is simply not enough spectrum in many markets to ensure that an incumbent forced to relocate would not suffer significant operational disruption, rather than receive spectrum that would allow it to maintain comparable facilities.

NAM/MRFAC also have serious reservations about the issuance of overlay licenses which, as envisioned by the Notice, would entitle the winning bidder to require relocation outside the 3/3 megahertz broadband segment. Here, again, narrowband incumbents would be asked to bear too much risk in many larger markets, and even some second-tier markets, for the same reasons given above. An incentive auction might be preferable to an overlay auction in this respect, but there are too many unknowns at this point to draw any firm conclusions.

NAM/MRFAC submit that the "comparable facilities" standard developed in the rebanding of the 800 MHz band for negotiated relocations -- coupled with the obligation to bargain in good faith -- should be sufficient to enable a broadband allocation in many markets. In

instances where it appears that one or another party may not have bargained in good faith, the aggrieved party should be entitled to bring the matter to the Commission's attention for relief, perhaps via Commission-authorized mediation.

Regardless of which method the Commission might choose for dealing with the holdout issue, "comparable facilities" should be the standard for incumbent relocation. *Id.* at para. 45. Not only does this standard address the legitimate concerns of incumbents, but as with reliance on current rules for the definition of "covered incumbent," comparable facilities is a concept well-established in the Commission's rules and case law. Use of this well-understood standard would minimize disputes and litigation going forward. And, of course, the broadband proponent should bear the costs of incumbent relocation as the party causing the cost. *Id.* at para. 50.

These Comments are offered as an initial assessment of some of the issues presented in this complex Notice. NAM/MRFAC expect to supplement these Comments as the proceeding unfolds.

Conclusion

For the foregoing reasons, NAM/MRFAC do not oppose the broadband proposal *per se*, but urge the Commission to proceed with caution to prevent disruption to private, internal

communications facilities and the important productivity and safety functions they provide.

Respectfully submitted,

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